

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-09-2008

CORAM:

THE HON'BLE MR.JUSTICE P.K.MISRA

AND

THE HON'BLE MR.JUSTICE K.KANNAN

WP Nos. 21779/2003 & 23113/2003

N.Sundar

...Petr., in W.P.No. 21779 of 2003

K.Veerasingam

...Petr., in W.P.No.23113 of 2003

Vs.

1. The Union of India

rep. by its General Manager,

Southern Railway,

Chennai 600 003.

2. The Chief Personal officer,

Southern Railway,

Chennai 600 003.

3. The Divisional Railway Manager,

Madras Division,

Southern Railway,

Chennai 600 003.

4. The Registrar,

Central Administrative Tribunal,

High Court Compound,

Chennai 104.

..Respondents in both W.P.s

Petitions filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the entire records connected with the impugned order of the Central Administrative Tribunal, the fourth respondent herein passed O.A.No.55 and 278 of 1999 dated 29.3.2001 and quash the same and

direct the respondents 1 to 3 to restore the petitioner as Grade II Driver with seniority and all other attendant benefits, in the vacancy that arose consequent on the retirement of 4 permanent automobile drivers prior to order of implementation of reversion dated 12.8.1996.

For Petitioners : Mr.V.Prakash
Senior Counsel
for Mr.S.N.Ravichandran

For Respondents 1 to 3: Mr.V.G.Suresh Kumar

O R D E R

K.KANNAN, J

I. The underlying cause for lis:

1. A judicial verdict of striking down certain clauses in the decasualization scheme for Group D services adopted by the railways administration had an unsavory ramification of reversion of 'regulars' who had been promoted. Two of the affected parties sought for the reliefs for restoring them to the previous grade (as Grade II Drivers) with seniority and all other attendant benefits, in the vacancies that arose prior to the order of implementation of the order of reversion by retirement of 4 permanent automobile drivers prior to the implementation of reversion dated 12.8.1996.

II Disposition at the Tribunal:

2. Consequent on the verdict in O.A. Nos. 517/92 and 823/91 of the Central Administrative Tribunal, the petitioners and 8 others filed O.A.916/96 challenging the impending orders of reversion. The application was dismissed on 17.10.96. The O.A. Nos.55 and 278 of 99 filed by the petitioners respectively were also dismissed on the ground that the reliefs were barred by principles res judicata by the decision in O.A.916/96. The amended prayers for restoring them to the higher post by filling up the permanent vacancies that arose prior to reversion were dismissed by a finding that the relief sought for were hit by Order II rule 2 CPC in that they ought to have pressed for the reliefs even in the earlier O.A and the issue of restoration could not be reopened by filing fresh O.As.

III. The litigious journey so far:

3. The petitioner in WP 21779/03, N.Sundar joined as a casual laborer on 1.9.1977. He passed the trade test on 19.12.85 and absorbed as gangman w.e.f. 13.8.86. He was promoted as senior gangman

on 21.9.87 and obtained a further promotion as Grade III Driver by order dt. 29.10.87 w.e.f. 15.12. 87 in the existing vacancy. He was regularized in the said post on 18.11.91 and promoted to Grade II Driver w.e.f. 1.3.93 and ranked no 3 in the seniority. The petitioner in WP 21113/03, Veerasamy joined as a casual labourer on 6.11.77. He passed the trade test on 21.11.86 and absorbed as gangman on 10.1.89. He was promoted as Grade III Driver on 21.7.89 against existing vacancy and regularized as Grade III Driver on 18.11.91. He earned a further promotion as Grade II Driver w.e.f 1.3.93 alongside Sundar but placed further down in the order of seniority. In the meanwhile, the Chief Personnel Officer in his letter dated 14.8.91 had set out the principles with regard to filling up the posts of Drivers in various grades, in a bid to introduce a decasualization scheme by absorbing casual labor artisans servicing in the scale Rs. 950-1500. The relevant portion of the scheme was as follows:

"2. The mode of filling up these posts has been examined in consultation with the recognized unions. it has been decided that these posts shall be filled in the following manner.

- i) 50% (fifty per cent) of these posts are to be filled by seniority-cum-seniority (trade test) from among.
 - a) the artizans Khalasis/helpers in grade Rs.800-150-and
 - b) the Khalasis in grade Rs.750-940 as also
 - c) the erstwhile casual labour artisans (in scale Rs.950-1500 who were absorbed in regular vacancies in the lower grades, after 1.1.82. The interest seniority of these regular employees will be fixed as per normal rules.
- ii) The balance (fifty percent) of the posts will be filled by serving casual labour artisans in scale Rs.950-1500.
- iii) After exhausting all the service casual labour artisans in the standard traders, there is no objection to other servicing casual labour in scale Rs.950-1500 being considered for absorption against the remaining posts in grade Rs.950-1500 after appropriate trade tests".

The petitioners had exercised their option by applying the principle of filling up 50% from regular Gr.D staff invoking the scheme to the categories i(a) and (b) .

4. Soon there after O.A.No.832/91 and O.A.No.517/92 were filed before the Central Administrative Tribunal, Madras bench challenging the above principles in the letter of chief personal

officer. These O.As. were decided on 15.11.1993 and 2.9.1994 respectively. It was held therein that diversion of posts created under the decasualisation scheme to the categories 1(a) and 1(b) of the letter of CPO dated 14.8.1991 would be illegal. In pursuance of the orders passed in the above, as regards the decasualisation of posts, the principles laid down had to be modified to include only those who were working as casual labour drivers on the crucial date and the erstwhile casual labour drivers who were absorbed in regular vacancies in the lower grade after 1.1.1982. In this process of review, it was found that all the applicants in the O.A. before the Tribunal did not fulfill the revised principles. Faced with the immediate prospect of reversion, the petitioners had filed O.A.916/96, in which the petitioners were respectively applicants 3 and 6. The applications were dismissed on 17.10.96. The Tribunal made some observations, gratuitous as they seem:

"However, before parting with the case, we may observe that the applicants had been functioning as drivers for a number of years. Though their reversion in the present circumstances cannot be questioned, it is for the respondents to consider promoting them as Drivers by suitable creation of posts/adjustments, so that the loss in emoluments may be reduced. This observation by itself will not confer any right to the applicants for claiming any such promotion or regularization or seniority".

The petitioners gave representations on 1.11.96, on the basis of the observations, making a pointed reference to the fact that "four senior drivers had also retired. "ie. 1. N.Murugan (2) C.Logarajan 3.S.Palani and 4.T.Doraikannu) and regular vacancies had also arisen. Therefore, I should also be considered against the said vacancy. Both the petitioners had joined the reverted post in protest and filed the O.As. which were disposed of in the manner indicated above and impugned in the writ petitions.

IV. Appraisal of the contentions

The history of the litigation ending with the order of the Tribunal in its decision O.A. 916/96 shall be the starting point for considering the merits of the petitioners' claim because, they can not reopen the issue of reversion done on the basis of the orders in O.A. Nos. 823/91 and 517/92, which have become final. From the representations of the petitioners after the reversion, it is possible to gather that there fell permanent vacancies following the retirement of the following persons:

N.Murugesan	retired on 31.3.93
C.Lingaraj	on 31.3.93
S.Palani	on 31.7.95
T.Duraikannu	on 30.3.96.

This fact has also been referred in the affidavit for amendment of the prayer and the prayer as it now stands is based only the averments relating to these permanent vacancies. The original reply statement does not join issues on these averments. Shri. V. Prakash, the senior counsel appearing on behalf of the petitioners draws our attention to the fact that in the Engineering Branch, Madras Division, the sanctioned cadre strength as on 1.4.1995 for automobile drivers against permanent posts were 45 and temporary posts were 26. The counsel for the respondent placed before us the office note, adverting to the representations given by the petitioners after they were reverted. We have gone through the same. It is noted that since they had been reverted to the post of gangmen, it was possible to re-promote them only to Grade III and not directly to Grade II which post they held. It was however, decided to protect their emoluments drawn in higher grade of Grade II to the extent permissible under rules. The reply statement filed before the Tribunal and the counter affidavit filed by the respondents in the writ petition did not meet the averments as regards the so called 4 permanent vacancies that fell in Grade II at the time when the reversion was made. On our direction, the respondent filed a further affidavit purporting to explain the same. The vacancies were not denied. It was explained by stating that 2 vacancies were surrendered during the restructuring in the year 1993 and 1996 and that only 10 posts were available in the scale Rs.950-1200. The appointments of the petitioners had already been made in Grade II at that time in the manner that the decasualization scheme was worked originally but they had to be reverted consequent to the order of the Tribunal. Again, by the time when two more vacancies fell with the retirement of Palani and Duraikannu, there had been an order of status quo passed in OA 823/1991 but were filled up after absorbing applicants in OA 517 of 1992 and 823 of 1991. When orders for reconsideration of representation was given in OA 914/96, they were utilized to re-promote seniors of the petitioners. The averments in the further affidavit are not very specific with regard to the crucial question about how the 4 vacancies were filled up. No clear details are available with reference to records. On the other hand, we find that the respondent counters it only by stating that it is not possible to re-create the picture as to utilization of posts at fairly a distant time. Such a response is neither here nor there. It is an undeniable precept of service jurisprudence that promotion would take effect

only from the date when it actually made and not when the vacancies arise, but when a reversion is made of persons who already held the higher posts for no misconduct on their part and when vacancies arose again in the higher posts, there should be sound justification for not considering the reverted persons to restore them gradually so as to help them get back their lost posts. We do not think, we can set the clock back and direct their promotion to be given from the date when vacancies arose. We are informed that the petitioners have since earned their promotion to Grade II in 2007 in the regular course. Evidently, there are no adverse entries against the petitioners all along. In our sympathetic consideration of all the aspects and balancing equities, it would subserve justice if their scales of pay are reworked notionally in the higher posts in Grade II at least from 24.01.2001, the date when the petitioners approached the Tribunal with amendment of their prayer. This way, there could be no violence to the order already passed in OA 916/96 to be fettered with the bar of res judicata or the technical plea of O.2.r.2. CPC. A modicum of financial benefit without upsetting the seniority position or awarding promotion from a retrospective date will be most just in the circumstances. It will mean a just reward for persons who have been serving without blemish in their service for more than 3 decades and will help improve the industrial morale and sense of pride among the workmen.

V. Conclusion

We therefore, set aside the order of the Central Administrative Tribunal in OA 55 & 278/99 and direct notional promotion by reworking the scales of pay in the promotion post of Grade II Drivers effective from 24.1.2001, without any right to claim arrears on such basis. The writ petitions are disposed on the above terms. No costs.

Sd/-

Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1. The General Manager,

The Govt. of India,

Southern Railway, Chennai 600 003.

2. The Chief Personal officer,
Southern Railway,
Chennai 600 003.

3. The Divisional Railway Manager,
Madras Division, Southern Railway,
Chennai 600 003.

4. The Registrar,
Central Administrative Tribunal,
High Court Compound, Chennai 104.

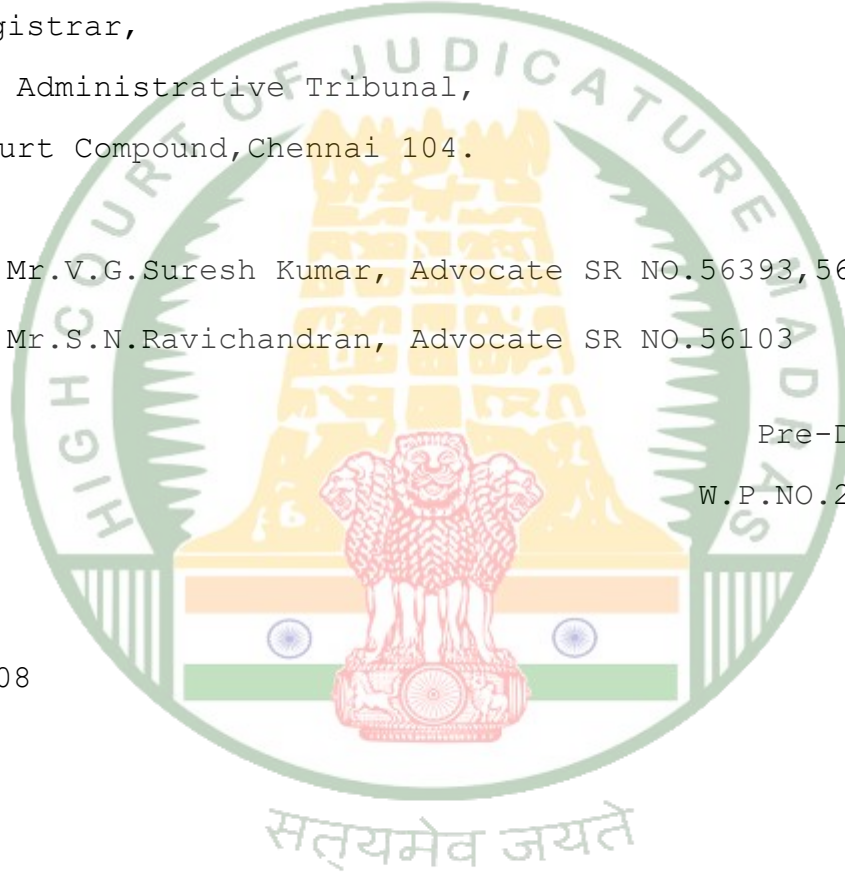
+ 2 CC To Mr.V.G.Suresh Kumar, Advocate SR NO.56393,56395

+ 2 CC To Mr.S.N.Ravichandran, Advocate SR NO.56103

Pre-Delivery Order in
W.P.NO.21779 OF 2003 AND
23113 OF 2003

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TP/16.10.08



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